

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

JOSEPH WILLIAM GILLIN,

Petitioner,

vs.

GEORGE SKULETICH, ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV-17-42-BU-BMM

ORDER

Petitioner Joseph Gillin (Gillin) has filed a petition seeking a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1). Gillin alleges that he is being unlawfully held in the Butte Silverbow Detention Center on a parole revocation matter. (Doc. 1 at 4-6).

United States Magistrate Judge Jeremiah C. Lynch issued an Order in this matter on July 13, 2017. (Doc. 4). Judge Lynch directed Gillin to explain to the Court the steps he had taken to exhaust his state court remedies. (Doc. 4 at 3). Gillin filed a response to Judge Lynch's Order on August 2, 2017. (Doc. 8).

Judge Lynch entered Findings and Recommendations in this matter on August 7, 2017. (Doc. 9). Judge Lynch recommended that Gillin's petition be dismissed because Gillin had not yet exhausted his state court remedies. (Doc. 9 at 4). Gillin did not file objections to Judge Lynch's Findings and Recommendations.

The Court has reviewed Judge Lynch's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Lynch's Findings and Recommendations, and adopts them in full. A review of Gillin's petition and his response to Judge Lynch's Order reveals that Gillin's claims have not yet been presented to and adjudicated by the state courts. This Court cannot review Gillin's petition until he has exhausted his state court remedies. *See Rose v. Lundy*, 455 U.S. 509, 518-522 (1982).

Accordingly, IT IS ORDERED:

1. Gillin's petition (Doc. 1) is DISMISSED without prejudice for failure to exhaust state court remedies.
2. A certificate of appealability is DENIED. Gillin has not made a substantial showing that he was deprived of a constitutional right. Reasonable jurists would agree that Gillin has failed to exhaust his state court remedies.
3. The Clerk is directed to enter judgment accordingly.

DATED this 13th day of September, 2017.



Brian Morris
United States District Court Judge